IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2497 OF 2004

M/s. IRIS Condiments (P) Ltd.
and Ors. ...Petitioners.

V/s

M.N. Ramkrishnan and Anr. ...Respondents.

Mr. Verghese Joseph i/b Joseph & Associates for the petitioners.
Mr. M.N. Ramakrishnan for respondent No.1.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE : 19th April, 2005.

P.C.

1. Heard the learned Counsel for the Petitioners and the learned Counsel for respondent No.1.

2. Petitioners are challenging the order of the Metropolitan Magistrate issuing the process on the complaint filed under section 420 read with section 34 of the Indian Penal Code.

3. The learned Counsel appearing on behalf of the petitioners submitted that the Metropolitan Magistrate does not have territorial jurisdiction to hear the complaint as the cause of action has arisen in Kerala and not in Mumbai. It is further submitted that the subject matter of the present complaint is purely of a civil nature and, therefore, the Metropolitan

Magistrate has issued the process without any application of mind. He has also made number of other submissions challenging the order passed by the Trial Court.

4. It is not possible to accept the submissions made by the learned Counsel for the petitioners. Petitioners have an alternative remedy of applying to the Trial Court under section 245 of the Criminal Procedure Code and seek an order of discharge. All questions raised in this petition are kept open. If an application is made by the petitioners for discharge under section 245 at an appropriate stage, the Magistrate to consider the said application on merits and in accordance with law as expeditiously as possible. Petitioner No.4 who is an old lady is granted exemption from appearing in the Trial Court, unless her presence is required for the purpose of framing charge after the application for discharge is heard and finally decided. If an application for exemption is filed by the other petitioners the same may be considered sympathetically and unless their presence is required, they may not be asked to remain present on each and every day.

5. With the above directions, Criminal Writ Petition is dismissed.

V.M. KANADE, J.